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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Dennis GROSS
Application No. : 09/338,729 Art Unit: 1617
Filed : June 23, 1999 Examiner: YU, Gina
Docket No. : 10853/1 Customer No.: 23838
For : COMPOSITION AND METHOD FOR TREATING SKIN

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR §41.41

Sir:

This Reply Brief is submitted in response to the Examiner's Answer. Appellant requests reversal of the rejections in the Final Office Action of June 16, 2005 in light of the remarks below in combination with the appellant's comments presented in the Appeal Brief filed on September 28, 2005.

Appellant's sections of Real Party in Interest, Related Appeals and Interferences, Status of Claims, Status of Amendments, Summary of Claimed Subject Matter, and Claims Appendix presented in the Appeal Brief stay unchanged.

Grounds of Rejections to be Reviewed on Appeal

Appellant's grounds of rejections to be reviewed presented in the Appeal Brief are repeated here. Appellant requests review of the rejections under 35 U.S.C. §103 of

(a) claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117 over Davis (US 5,720,949) in view of Rapaport (US 5,505,948); and

(b) claims 76, 100, 107 and 108 over Davis in view of Rapaport applied to claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117, and further in view of Linn et al (US 4,797,273), Hahn et al (US 5,804,203) and McAtee et al (US 5,811,111).

Argument

(A) Claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117 are patentable over Davis in view of Rapaport.

Regarding the patentability of claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117 over Davis in view of Rapaport, the claims were argued in the Appeal Brief with the following grouping, which grouping is kept in this Reply Brief:

I. claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 85, 88, 90-93, 98, 99, 101-106 and 109-117;

II. claims 94-97;

III. claim 77; and

IV. claim 78.

By having separate grouping of the claims, appellant contends that claims belonging to different groups do not stand or fall together.

(A)(I) Claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 85, 88, 90-93, 98, 99, 101-106 and 109-117:

The Examiner's Answer presents an inaccurate statement of the subject matter of claim 117 in page 3. Actually, claim 117 can be summarized in that it pertains to a method of treating skin, comprising the sequential steps of (the corrections are highlighted in bold):

a) applying to the skin a first liquid composition of pH between **about 2.5** and **about 4**, which comprises an acidic agent **and a cosmetically acceptable vehicle**;

b) neutralizing the composition by applying to the skin a second liquid composition of pH **greater than about 7 to about 12** (instead of "7-12" as alleged by the Examiner's Answer), which comprises **about 0.1% to about 10% of** at least one surfactant/emulsifier and an alkaline agent **and a cosmetically acceptable vehicle**; and

c) applying to the skin a moisturizer, sun screen and/or makeup without **preceded** (instead of "proceeded" as alleged by the Examiner's Answer) by rinsing off the first and second compositions from the skin.

Citing column 10, lines 43-51 of Davis, the Examiner's Answer (page 5, first paragraph) states that Davis "particularly teaches that the acid composition is applied first if an enhanced exfoliation of the skin is desired or in the absence of pretreatment with alpha- or beta-hydroxy acids." Appellant could not find where Davis discloses applying the acid composition before the effervescent composition "in the absence of pretreatment with alpha- or beta-hydroxy acids." Column 10, lines 49-51, of Davis merely discloses that the absence of pretreatment with a moisturizing cream containing an emollient is only one of two alternative conditions of applying the acid composition to the skin before applying the effervescent composition. The Examiner's Answer's statement is a mischaracterization of the disclosure of Davis.

Page 6, first full paragraph, of the Examiner's Answer is incorrect in implying that it was obvious to change the cosmetic mask product, formed by mixing the viscous acid composition and viscous effervescent composition, of Davis to the liquid compositions used in the claimed methods because "whether the composition is in the form of mask or liquid, these conventional forms are merely viewed as different means of delivery of active ingredients into the skin so that the reaction of the effervescent agent and acid component can take place thereon, which can be substituted by one for the other." As explained below, Davis uses the viscous acid composition and viscous effervescent composition on purpose. In light of Davis's purpose, compositions in the form of a cosmetic mask and liquid are not freely interchangeable. Appellant maintains that it would not have been obvious to replace the cosmetic mask product of Davis with the liquid compositions used in the methods of the present claims because Davis in view of Rapaport, or Davis in view of Rapaport and further in view of Linn et al, Hahn et al and McAtee et al, does not suggest replacing Davis's cosmetic mask product (formed by mixing Davis's viscous acid composition and viscous effervescent composition on the skin, column 3, lines 11-14 and 41-43) with liquid compositions.

In page 12, the 5th to 7th lines from the bottom, the Examiner's Answer asserts, by citing column 1, lines 27-32, of Davis, that it would have been obvious to substitute Davis's viscous cosmetic mask compositions used in Davis's method with liquid lotion or cream compositions because the liquid lotion or cream compositions and Davis's viscous cosmetic mask compositions "are both used for the same purposes." Appellant disagrees that Davis discloses that the liquid lotion or cream compositions and Davis's viscous cosmetic mask compositions are used for the same purposes. Column 1, lines 21-23, of Davis refers to the prior art lotion or cream compositions by citing U.S. Patent No. 5,422,112, which is directed to thickened acidic

cosmetic compositions, and citing U.S. Patent No. 4,272,544, which is directed to skin cell renewal compositions without skin irritation. In contrast, the cosmetic mask product of Davis is aimed at treating skin with a foaming action generated by a chemical reaction between the viscous acid composition and the viscous effervescent composition on the skin, wherein carbon dioxide gas bubbles are percolated through the mixture of the viscous acid composition and viscous effervescent composition, and wherein the relatively high viscosity delays the completion of the chemical reaction, with an implication that the foaming action is prolonged (column 1, lines 43-47; column 2, lines 47-52; column 3, lines 11-14 and 41-47; column 4, lines 37-39; column 11, lines 19-24 and 37-40). In particular, Davis discloses that foaming occurs because of carbon dioxide gas percolating through the mixture of the viscous compositions (column 11, lines 19-22). The prior art lotion or cream compositions referred to in column 1 of Davis are not for skin treatment with foaming action and, as a result, do not serve the same purpose as Davis's viscous acid and effervescent compositions. Thus, contrary to the assertion of the Examiner's Answer, it would not have been obvious to substitute the prior art lotion or cream liquid compositions for Davis's viscous cosmetic mask compositions in Davis's foaming skin-treatment method. In column 1, lines 21-32, Davis merely points out that certain skin treatment regimens involving the application of a lotion or cream product is known, and face masks are also known, but Davis does not suggest interchanging lotion or cream products with Davis's cosmetic mask product for the purpose of skin treatment with the foaming action. Davis in view of Rapaport, or Davis in view of Rapaport and further in view of Linn et al, Hahn et al and McAtee et al, does not teach or suggest that replacing Davis's viscous cosmetic mask compositions with liquid compositions would achieve similar foaming skin treatment effects of Davis's cosmetic mask product.

Because both Davis's acid composition and effervescent composition are viscous, the time for a complete chemical reaction is delayed somewhat (column 11, lines 37-40). Davis wants both the acid composition and the effervescent composition to be viscous to form a cosmetic mask in order to promote the foaming action for skin treatment. The skin treatment with the foaming action is promoted by Davis's use of viscous acid composition and viscous effervescent composition to form the cosmetic mask because (a) viscous compositions can stay on the skin longer (if the two compositions were not viscous, the compositions would drip and not remain on the skin, see column 3, lines 12-14 and 41-43), (b) the relatively high viscosity allows the acid component and the effervescent agent to react for a longer time (see column 11, lines 37-39), and (c) the relatively high viscosity also would serve to trap the carbon dioxide gas formed thereby allowing the gas to contact the skin for a longer time (so the gas is allowed to percolate through the viscous mixture, see column 11, line 21). If Davis's viscous acid composition and viscous effervescent composition were replaced with liquid compositions as asserted by the Examiner's Answer, the advantage of Davis's cosmetic mask product in terms of promoting foaming action would not be achieved. This is one of the reasons why the instant claims would not have been obvious over Davis in view of Rapaport, or Davis in view of Rapaport and further in view of Linn et al, Hahn et al and McAtee et al because a person of ordinary skill in the art would not have been motivated to replace Davis's viscous acid composition and viscous effervescent composition with the liquid compositions used in the claimed methods.

In the last sentence of the full paragraph in page 6, the Examiner's Answer states that the "motivation to make less viscous compositions to shorten the reaction time is also found in col. 11, lines 37-40, which teaches that viscosity of the composition delays the time for complete

reaction.” Appellant disagrees. Column 11, lines 37-40, of Davis merely discloses that because the acid composition and effervescent composition are both viscous, “the time for complete reaction is delayed somewhat, permitting contact of the skin with the acid component.” Davis does not disclose any undesirability of the somewhat delay in the **completion** of the reaction between the acid component and effervescent component caused by the relatively high viscosity of the compositions. In the contrary, because the aim of Davis’s cosmetic mask is to treat the skin with the foaming action, the delaying of the completing the reaction between the acid component and the effervescent composition would be desirable because the delay would make the foaming action last longer from the moment the reaction begins until the completion of the reaction, wherein the formation of the carbon dioxide gas would be prolonged. Thus, appellant contends that column 11, lines 37-40, of Davis does not provide any motivation for making the acid composition and the effervescent composition less viscous as alleged by the Examiner’s Answer. In fact, Davis wants both the acid composition and effervescent composition to not flow appreciably when applied to the skin (column 3, lines 11-13 and 41-43).

In page 5, first paragraph, of the Examiner’s Answer, the Examiner stated that the “prior art teaches that the notion of treating the skin by the heat and foam that are generated by sequentially applying an effervescent agent and acid components is well known.” Appellant disagrees. Actually, Davis discloses treating the skin by heat and foam generated by sequential application of the effervescent composition and acid composition **in the form of a cosmetic mask product which is removed from the skin** (see column 1, lines 35-49; column 2, lines 38-39; column 12, lines 2-5; column 13, lines 17-19; emphasis added). However, the claimed methods do not require any cosmetic mask product, or any removal of a cosmetic mask formed by mixing a viscous acid composition and a viscous effervescent composition. Davis in view of

Rapaport, or Davis in view of Rapaport and further in view of Linn et al (US 4,797,273), Hahn et al (US 5,804,203) and McAtee et al, does not teach or suggest applying a moisturizer, sun screen and/or makeup when the acid composition and effervescent composition remain on the skin or without preceded by rinsing off the acid composition and effervescent composition from the skin.

In lines 1 and 2 of page 7, the Examiner's Answer concedes that the acid composition and the effervescent composition of Davis are given time to dry once they are applied to the skin. Column 1, lines 29-31, of Davis discloses that face masks, i.e., cosmetic masks or "mud packs," harden to form a crustlike film after application on the skin. One of ordinary skill in the art would have recognized that the crustlike film formed by the cosmetic mask product of Davis would interfere physically and/or chemically with the application of any moisturizer, sun screen and/or makeup. There would have been no motivation to apply the moisturizer, sun screen and/or makeup while the mixture of Davis's viscous acid composition and viscous effervescent composition, i.e., the cosmetic mask product, still remain on the skin or without preceded by rinsing the mixture off the skin. This is another reason why the instant claims would not have been obvious over Davis in view of Rapaport, or over Davis in view of Rapaport and further in view of Linn et al, Hahn et al and McAtee et al.

Regarding the requirement of claims 44, 90 and 117 that the first liquid composition and the second liquid composition remain on the skin or not be rinsed from the skin, the Examiner's Answer, citing column 12, lines 2-5, of Davis, alleges that the rinsing of Davis's cosmetic mask product from the skin is merely an optional step because Davis teaches that the cosmetic mask product *may* be washed (page 7, lines 4-9, and page 12, the 3rd to 5th lines, of the Examiner's Answer). Appellant notes that Davis does not teach that the washing of the cosmetic mask

product from the skin is an optional step in general. Instead, column 12, lines 2-5, of Davis teaches that the cosmetic mask product “is removed from the skin by means of a cloth or scraper. The face of the consumer **may then be** washed with a gentle soap composition.” (emphasis added) That means Davis teaches the optional washing of the face with soap only **after** the cosmetic mask product has been removed from the face. Davis in view of Rapaport, or Davis in view of Rapaport and further in view of Linn et al, Hahn et al and McAtee et al, does not teach or suggest applying a moisturizer, sunscreen and/or makeup before the mixture of the viscous acid composition and effervescent composition of Davis is rinsed off the skin.

Page 7, the last sentence of the first full paragraph, of the Examiner’s Answer asserts that Davis clearly teaches that massaging lotion or cream compositions into the skin does not require removing the compositions. However, the lotion or cream compositions that the Examiner’s Answer is referring to are the prior art lotion or cream type products that may be massaged into the skin as disclosed by Davis in column 1, lines 27-29. Instead, Davis uses viscous acid composition and viscous effervescent composition to form a cosmetic mask, which is removed from the skin after application (column 1, lines 47-49). In fact, Davis discloses that prior art face masks or “mud packs” are to be removed from the skin after hardening into a crustlike film (column 1, lines 29-31). There would have been no motivation to apply the moisturizer, sunscreen and/or makeup when the cosmetic mask of Davis still remains on the skin, or before the viscous acid and effervescent compositions of Davis are rinsed off the skin. Rapaport fails to provide such a motivation. Similarly, Rapaport further in view of Linn et al, Hahn et al and McAtee et al does not provide such a motivation.

The Examiner’s Answer alleges that Rapaport teaches in column 13, lines 34-56, that applying moisturizer and sunscreen to the skin after an acid peel to protect the skin is well

known in the art (page 8, lines 5-7, Examiner's Answer). The Examiner's Answer also alleges that the claimed method was obvious because Rapaport teaches treating the skin with moisturizer and sunscreen after or as a part of a cosmetic skin care regime (page 11, lines 3-5, Examiner's Answer). Appellant notes that Rapaport discloses the application of the moisturizer and sunscreen after an acid peel using Rapaport's mild acid peel composition, which mild acid peel composition does not require neutralization (column 8, lines 46-48; column 13, lines 46-47 and 54-57). The cosmetic skin care regime taught by Rapaport concerns the use of Rapaport's mild acid peel composition, not concerning the use of mud packs like the cosmetic mask product of Davis. In contrast to Rapaport's cosmetic skin care regime involving Rapaport's mild acid peel composition, the skin treatment method of Davis requires neutralization of Davis's viscous acid composition with the viscous effervescent composition in order to generate carbon dioxide gas for achieving the foaming action to treat the skin. The teachings of Rapaport as related to Rapaport's mild acid peel composition should not be used to modify Davis's skin treatment method because Rapaport's mild acid peel composition is intended to be left upon the skin without neutralization or removal required by the prior art methods (column 8, lines 46-48). Therefore, with the neutralization required by Davis to generate carbon dioxide gas for the foaming action, there would have been no motivation to modify the skin treatment method of Davis by replacing Davis's viscous acid composition with Rapaport's mild acid peel composition as alleged by the Examiner. Besides, due to a significant difference in viscosity, replacing Davis's viscous acid composition with Rapaport's mild acid peel composition would lose some of the foam promoting effects of Davis's viscous acid composition, which replacement would be detrimental to the aim of Davis's skin treatment method. This is another reason why there would

have been no motivation to modify the skin treatment method of Davis by replacing Davis's viscous acid composition with Rapaport's mild acid peel composition.

Alternatively, since Rapaport's mild acid peel composition is intended to be used without neutralization (column 8, lines 46-47; column 9, lines 51-56), if Davis's skin treatment method were to be modified by replacing Davis's viscous acid composition AND viscous effervescent composition with Rapaport's mild acid peel composition, the resultant method would be different from the methods of the instant claims.

The Examiner's Answer asserts that Rapaport does not teach against the neutralization step in the skin peeling process because Rapaport merely teaches in column 11, lines 23-29, that neutralization is optional and is still needed in order to avoid the wounding of living skin tissue by the harsh skin peeling agents. The teachings in column 11, lines 23-29, of Rapaport relied upon by the Examiner's Answer actually refers to prior art skin peeling methods which require relatively quick neutralization or removal of the acidic peeling agents due to the high concentrations of the acidic peeling agents used. As a result, column 11, lines 23-29, of Rapaport does not deal with Rapaport's mild acid peel composition. Appellant notes that Rapaport discloses that Rapaport's mild acid peel composition, having a low concentration of the acid peeling agent, is intended to be left upon the skin without the neutralization or removal required in the prior art (column 8, lines 43-48). Rapaport discloses that Rapaport's mild acid peel composition has a significant novelty over the prior art skin peeling methods in that, unlike the prior art skin peeling methods, Rapaport's mild acid peel composition does not need neutralization or removal from the skin after application (column 9, lines 52-56). Thus, contrary to the assertion of the Examiner's Answer, Rapaport does teach against the neutralization step in the use of Rapaport's mild acid peel composition.

The Examiner's Answer asserts that it would have been obvious to modify the skin treatment method of Davis by substituting Rapaport's mild acid peel composition for Davis's acid composition, as motivated by Rapaport, because 1) Davis teaches that it may be desirable to maintain an acidic composition on the skin for a gentle peel; and 2) the skilled artisan would have had a reasonable expectation of successfully achieving a gentle acid-peeling effects while the composition remains on the skin, as taught by Rapaport (page 8, second full paragraph, Examiner's Answer). Appellant maintains that the assertion of the Examiner's Answer is based on an embodiment of Davis's method not applicable to the instant claims. Davis discloses that the method of Davis can achieve a gentle peel by using a **stoichiometric excess** of the acid composition versus the effervescent composition, so that the acid component is maintained on the skin after the reaction between the viscous acid composition and viscous effervescent composition (column 11, lines 40-48; emphasis added). In other words, to achieve the gentle peel, Davis requires that NOT all of the acid component is reacted with the effervescent agent. However, the instant claims recite that the first dermatological liquid composition, i.e., the acidic liquid composition, is neutralized by the second dermatological liquid composition, i.e., the alkaline liquid composition, and the claims do not recite partially neutralizing the first dermatological liquid composition by the second dermatological liquid composition. If a stoichiometric excess of the acid composition is maintained over the effervescent composition of Davis as alleged by the Examiner's Answer, not all the acid composition reacts with an alkaline agent, so the gentle peel method would not be different from the methods of the instant claims. Page 14, last sentence of the full paragraph, of the Examiner's Answer alleges that whether Davis teaches partial or complete neutralization of the acid is not a relevant issue because the claimed inventions do not require any specific amount of the neutralizing composition to be

applied. Appellant disagrees because according to page 9, line 7, of the instant specification, the use of the surfactant/emulsifying agent in the second dermatological liquid composition ensures that the acid in the first dermatological liquid composition is completely reacted with the alkaline agent.

Page 11, last paragraph, of the Examiner's Answer asserts that the evidence of record indicates that one of ordinary skill in the art would have found a motivation to modify the Davis's method in the form of lotion and subsequently apply a moisturizer as a post-treatment regime. However, as explained above, the cited prior art references do not teach or suggest replacing Davis's viscous acid composition and viscous effervescent composition with lotions as alleged by the Examiner's Answer. The Examiner's Answer is not clear as to what evidence of record supports its allegation that one of ordinary skill in the art would have found a motivation to "subsequently apply a moisturizer as a post-treatment regime." If the allegation is based on the Examiner's Answer's statement that it would have been obvious to substitute Rapaport's mild acid peel composition for Davis's formulation "in expectation of achieving similar skin peeling treatment effects" (see page 11, the last 4 lines, Examiner's Answer), appellant submits that the allegation is wrong. Davis's cosmetic mask product and Rapaport's mild acid peel composition do not achieve similar skin peeling treatment effects. Davis's cosmetic mask product is for treating the skin with the foaming action caused by the percolation of carbon dioxide gas through the mixture of viscous acid composition and viscous effervescent composition. In contrast, Rapaport's mild acid peel composition is for peeling skin, not for treating the skin with a foaming action. Although there is an embodiment of Davis's method that can achieve mild skin peeling, the embodiment differs from the claimed methods in not completely reacting the acid composition with an alkaline composition as explained above.

Therefore, whether such an embodiment of Davis's method and Rapaport's mild acid peel composition can achieve "similar skin peeling treatment effects" is not relevant to the *prima facie* obviousness, if any, of the claimed methods.

In response to appellant's explanation that Davis teaches away from applying a moisturizer when the cosmetic mask product is on the skin because Davis teaches applying the moisturizer before applying the acid composition in column 10, lines 1-11 and 31-35 and column 12, lines 6-14, the Examiner's Answer argues that column 11, lines 40-50, of Davis teaches that in case where the user desires a gentle peel of the skin, the acid composition is used in stoichiometric excess over the effervescent agent and there is no pretreatment with an exfoliating moisturizing cream. However, as pointed out above, the gentle peel embodiment of Davis's method is outside the scope of the instant claims because the viscous acid composition is not completely reacted with the effervescent agent due to the stoichiometric excess of the acid component. Thus, considering the embodiments of Davis's skin treatment method that do not use a stoichiometric excess of the acid component, Davis teaches optional pretreatment with the moisturizer. Davis is completely silent on treating the skin with the moisturizer after the skin treatment with the cosmetic mask product, let alone treating the skin with the moisturizer when the viscous acid composition and the viscous effervescent composition still remain on the skin or have not been rinsed off the skin.

Due to at least the above reasoning, appellant maintains that the Examiner has failed to show *prima facie* obviousness of claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 85, 88, 90-93, 98, 99, 101-106 and 109-117 over Davis in view of Rapaport.

(A)(II) Claims 94-97:

Claims 94-97 depend on claim 90. Therefore, the reasons discussed above under (A)(I) for the patentability of claim 90 over Davis in view of Rapaport also apply to claims 94-97. Furthermore, the additional arguments of the lack of *prima facie* obviousness of claims 94-97 over Davis in view of Rapaport presented in subsection (A)(II) of the Appeal Brief are incorporated by reference here.

(A)(III) Claim 77:

Claim 77 depends on claim 90. Therefore, the reasons discussed above under (A)(I) for the patentability of claim 90 over Davis in view of Rapaport also apply to claim 77. Furthermore, the additional arguments of the lack of *prima facie* obviousness of claim 77 over Davis in view of Rapaport presented in subsection (A)(III) of the Appeal Brief are incorporated by reference here.

(A)(IV) Claim 78:

Claim 78 depends on claim 90. Therefore, the reasons discussed above under (A)(I) for the patentability of claim 90 over Davis in view of Rapaport also apply to claim 78. Furthermore, the additional arguments of the lack of *prima facie* obviousness of claim 78 over Davis in view of Rapaport presented in subsection (A)(III) of the Appeal Brief are incorporated by reference here.

(B) Claims 76 and 100 are patentable over Davis in view of Rapaport as applied to claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117 and further in view of Linn et al, Hahn et al and McAtee et al.

The reasons for the patentability of claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117 over Davis in view of Rapaport discussed above also apply to claims 76 and 100. Linn et al, Hahn et al and McAtee et al fail to remedy the deficiencies of Davis in view of Rapaport.

(C) Claim 107 is patentable over Davis in view of Rapaport as applied to claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117 and further in view of Linn et al, Hahn et al and McAtee et al.

The reasons of patentability of claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117 over Davis in view of Rapaport discussed above also apply to claim 107. Linn et al, Hahn et al and McAtee et al fail to remedy the deficiencies of Davis in view of Rapaport. Furthermore, the additional arguments of the lack of *prima facie* obviousness of claim 107 over Davis in view of Rapaport and further in view of Linn et al, Hahn et al and McAtee et al presented in subsection (C) of the Appeal Brief are incorporated by reference here.

(D) Claim 108 is patentable over Davis in view of Rapaport as applied to claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117 and further in view of Linn et al, Hahn et al and McAtee et al.

The reasons for the patentability of claims 11-15, 28, 29, 33-36, 40, 43, 44, 47, 49, 50, 70, 72, 73, 77, 78, 85, 88, 90-99, 101-106 and 109-117 over Davis in view of Rapaport discussed above also apply to claim 108. Linn et al, Hahn et al and McAtee et al fail to remedy the deficiencies of Davis in view of Rapaport. Furthermore, the additional arguments of the lack of *prima facie* obviousness of claim 108 over Davis in view of Rapaport and further in view of Linn et al, Hahn et al and McAtee et al presented in subsection (D) of the Appeal Brief are incorporated by reference here.

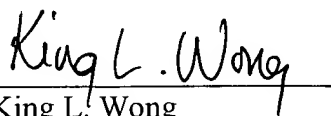
Based on at least the reasons explained above, appellant submits that the Examiner's Answer has failed to support any finding of *prima facie* obviousness of the pending claims. Reversal of the obviousness rejections of the pending claims is urged.

In the event that the filing of this Reply Brief is deemed not timely, the appellant petitions for an appropriate extension of time. The Director is authorized to charge the petition fee, and any other fees that may be required for this Reply Brief to Deposit Account No. 11-0600.

Respectfully submitted,

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